



Reduction in Sentence (aka compassionate release) Explainer

Grounds & Procedure for a Reduction in Sentence

1. **Grounds for a reduction in sentence under USSG §1B1.13** – The following are “extraordinary and compelling” reasons defined by the Sentencing Commission that may qualify an individual to petition the sentencing court for a reduced sentence:
 - **Medical circumstances (b)(1)**
 - A terminal illness (a serious and advanced illness with an end-of-life trajectory).
 - Applies to individuals who cannot adequately care for themselves (dressing, bathing, feeding) in a carceral environment because of a:
 - serious physical or medical condition, or
 - serious functional or cognitive impairment, or
 - deteriorating physical or mental health because of aging
 - Inadequate medical care
 - This provision covers individuals who are suffering from a medical condition and require, but are not receiving, long-term or specialized care, putting them at risk of serious deterioration or death.
 - Public health crisis
 - There is an ongoing infectious disease outbreak that is likely to affect the individual who is at an increased risk of a severe complication if exposed to the infectious disease, and the risk of exposure cannot be diminished in an adequate amount of time.
 - **Age of the individual (b)(2)**
 - This applies to individuals who: (1) are at least 65 years old; (2) are experiencing physical or mental health issues because of the aging process; and (3) have served the lesser of 10 years or 75% of their sentence.
 - **Family circumstances (b)(3) applies when**
 - An individual has minor children (under 18 years old) and the primary caregiver of those children has died or is unable to care for the children.
 - An individual has a child who is 18 years or older, who is incapable of self-care due to a physical or mental disability and the primary caregiver has died or is unable to care for them.
 - The incarcerated person’s spouse becomes incapacitated and there is no one else who can care for the defendant’s spouse.
 - The incarcerated person’s parent becomes incapacitated and the incarcerated person is the only individual who can be a caregiver for the parent.
 - **Victims of abuse (b)(4)**
 - This provision covers individuals who are survivors of sexual abuse by prison personnel, as well as survivors of physical abuse by prison personnel. If the individual suffered physical abuse, that abuse must result in “serious bodily

injury” as defined in the Guidelines at §1B1.1. If the individual endured sexual abuse, the abuse must have involved a sexual act (penetrative, genital contact). In both cases, the misconduct must be established by a finding in a civil, criminal, or administrative proceeding, unless those proceedings are unduly delayed or the individual is facing imminent danger.

- **Other reasons (b)(5)**

- The Director of the Bureau of Prisons always has had broad discretion to identify reasons other than those described by the policy statement for a sentence reduction. The new provision provides a more limited authority. It gives the BOP Director *and judges* the discretion to identify unlisted extraordinary and compelling reasons. The other reason(s), however, must be similar in gravity to the ones expressly listed above in (b)(1)-(b)(4): terminal illness, serious medical condition, advanced age, extreme family circumstance, and sexual or physical abuse.

- **Unusually long sentences (b)(6)**

- This provision gives judges discretion, after full consideration of the prisoner’s individualized circumstances, to determine whether a change in the law that would result in a lower sentence today *could be* a ground for sentence reduction. The person must have served at least *ten years* of an unusually long sentence, *and* there must be a *gross disparity* between the sentence being served and the one that would be imposed today. (Changes to the guidelines that are not made retroactive cannot be considered a change in the law for purposes of this ground.)
- Please note: the law about whether you can even establish a claim for an unusually long sentence under 1B1.13(b)(6) is unsettled in many courts across the country. If you believe you have a claim under (b)(6), we encourage you to reach out to FAMM for guidance, at research@famm.org.

- **A few additional notes on 1B1.13:**

- Rehabilitation of an individual certainly can be *part* of an argument for a reduced sentence. But rehabilitation alone *cannot be* the basis for a reduced sentence. To leverage an individual’s rehabilitation as an argument for a reduced sentence, that argument must be made in combination with other circumstances.
- Even though an extraordinary and compelling circumstance may have been anticipated or foreseen at the time of sentencing, it can still be considered by a court under a reduction in sentence motion. For example, if an individual had breast cancer at the time of sentencing, but files a reduction in sentence request three years into her term of imprisonment because it has advanced, the judge could still consider her motion.

2. Safety analysis - Even if a court finds that there are extraordinary and compelling reasons that might warrant a reduced sentence (see above), that does not mean you will be released. The court must next consider whether you can be safely released to the community under [18 U.S.C. § 3142\(g\)](#), and whether the sentencing factors under [18 U.S.C. § 3553\(a\)](#) support a reduced sentence.

In making these determinations the judge might consider the following:

- (1) Your BOP disciplinary history;
- (2) Types of programs that you have completed while incarcerated (including educational and rehabilitative programs) and your work history, including employment at UNICOR;
- (3) History of substance abuse with a record of sobriety in prison, etc.
- (4) The need to afford adequate deterrence to criminal conduct;
- (5) The need to promote respect for the law;
- (6) A release plan that will ensure your safety and the safety of the community.

3. Procedure for a RIS motion

- Letter to the Warden
 - The first part of filing a reduction in sentence motion is writing a letter to the warden of the facility where you or your loved one is incarcerated. There is no form for this. It should be written either in an email or handwritten. This letter serves as “notice” that you are requesting a reduction in sentence.
 - The letter should include all of the reasons that you think you qualify for a reduction in sentence (see above. BOP also has its own program statement, which you can find [here](#)).
 - Describe a release plan, (i.e., where the incarcerated person would live and support themselves, etc.)
- Wait 30 days from sending the letter to the Warden
- After 30 days, you can file a motion in court
 - Note: the motion must be filed in the court in which the incarcerated person was sentenced, *not* the court where the prison is located.
 - You do not need to wait for a response from the warden of the facility. Regardless of whether the warden responds, you can still move forward with your petition in court if it has been 30 days since submission of the warden letter.

4. Ways to file a motion

- *Pro se* (on your own): You can file your motion on your own behalf, without legal assistance. The United States Court website has a template form that can be used. You can find that template [here](#).
- *Attorneys*
 - Federal defenders: You can reach out to the federal defender office in the district in which you were sentenced to see if they can support your motion.
 - Federal Compassionate Release Clearinghouse: If you want to have your case reviewed by the federal clearinghouse to see if we can find pro bono counsel (lawyers who do the work for free), please send us an email at research@famm.org.
 - Paid counsel: you can pay for an attorney to file the motion.

Please remember that FAMM is not your attorney. Nothing in this handout should be construed to create an attorney/client relationship between you or your loved one and FAMM. We have created this document for educational purposes only.